

JUDGE BENJAMIN H. SETTLE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
JOHN OBERT,)
)
Defendant.)

NO. CR07-5815BHS

AFFIDAVIT OF RUSSELL V.
LEONARD IN SUPPORT OF
MOTION TO CONTINUE TRIAL
DATE

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

Russell V. Leonard, being first duly sworn and upon oath, deposes and states as follows:

1. I am the Assistant Federal Public Defender assigned to represent Mr. Obert, the defendant in this matter. Mr. Obert is accused of one count of possession of child pornography, as prohibited by 18 U.S.C. §§ 2252(a)(4)(B). If convicted, Mr. Obert faces a maximum term of 20 years in prison, with a mandatory-minimum of 10 years in prison, based on the Government's allegation that he possesses a qualifying prior conviction under 18 U.S.C. §§ 2252(b)(2).

1 2. Mr. Obert has been detained pending the resolution of this matter, and is being
2 held at the Federal Detention Center, at Seatac, Washington.

3 3. The current trial date – February 11, 2008, at 9:00 am – is the first trial setting
4 in this matter. The parties – plaintiff, the United States of America, as represented by
5 Jill Otake and Bruce Miyake, Assistant United States Attorneys, and the defendant John
6 Obert – have filed an agreed motion requesting a continuance of the trial date. Mr.
7 Obert has executed a Speedy Trial Waiver (through June 30, 2008) indicating his
8 agreement with this request for a continuance.

9 4. Mr. Obert is already the subject of an indefinite, involuntary commitment
10 order under RCW 71.09, *et seq.*, Washington state's law which allows for the detention
11 and treatment of so-called "sexually violent predators." Mr. Obert is now accused of
12 possessing child pornography at the Special Commitment Center (SCC), the detention
13 facility on McNeil Island used by Washington to detain persons committed under RCW
14 71.09.

15 5. By letter dated December 28, 2007, the Government provided discovery of
16 thirty-one pages related to its investigation. Shortly thereafter, the prosecutor emailed
17 me court documents establishing Mr. Obert's involuntary commitment under the state
18 law. The prosecutor has offered to conduct a discovery conference, which is a necessary
19 next step, and I expect to be making a more specific written demand for follow-up
20 discovery soon. From brief discovery provided to date, it is clear that other investigative
21 reports and materials, including videotape, have not yet been disclosed. Issues regarding
22 defense access to the alleged child pornography will need to be hammered out, including
23 access for possible defense experts (whom the defense still needs to identify and retain).
24 Additional time is also necessary to identify and interview potential witnesses, many of
25 whom are either detained at or employed at the SCC, a highly restrictive, lock-down
26 facility. The logistics of scheduling and conducting interviews at such a facility are

1 significant. It is fair to say that an independent defense investigation has only just
2 begun. That being said, all counsel have conferred about the status and exchange of
3 discovery in an open and productive manner.

4 6. Nonetheless, it is clear that discovery is not yet complete, and that the defense
5 requires more time to receive and review discovery, perform its own independent
6 investigation (including possibly hiring experts) and conduct legal research prior to
7 choosing and filing pre-trial motions and undertaking trial preparation. The parties also
8 require more time to discuss settlement as an alternative to trial, for the sake of
9 efficiency and in order to preserve full acceptance of responsibility credit for the
10 defendant.

11 7. By their joint motion, the parties agree that the ends of justice served by
12 granting this continuance outweigh the best interests of the public and the defendants in
13 a speedy trial. 18 U.S.C. § 3161(h)(8)(A). Proceeding to trial absent adequate time for
14 the defense to prepare would result in a miscarriage of justice. 18 U.S.C.
15 §3161(h)(8)(B)(i). The defense needs to explore issues of some complexity, including
16 all other relevant issues and defenses applicable to the case, which would make it
17 unreasonable to expect adequate preparation for pretrial proceedings or for trial itself
18 within the time limits established by the Speedy Trial Act and currently set for this case.
19 18 U.S.C. § 3161(h)(8)(B)(ii). And finally, under 18 U.S.C. § 3161(h)(8)(B)(iv), taking
20 into account the exercise of due diligence, a continuance is necessary to allow the
21 defendant the reasonable time for effective preparation by the defense.

22 8. For all of the above reasons, the defense respectfully requests a continuance of
23 our trial date of February 11, 2008, to a date in June of 2008, available on the Court's
24 calendar, with a pre-trial motions cutoff and pre-trial conference consistent with this new
25 date.

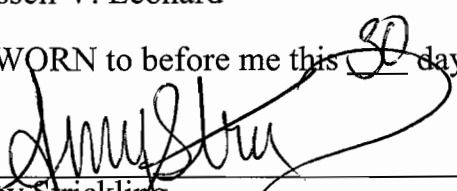
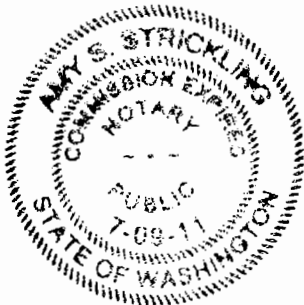
26 DONE this 19th day of January, 2008.

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Russell V. Leonard

SUBSCRIBED AND SWORN to before me this 30 day of January, 2008.



Amy Strickling
Notary Public for the State of Washington.
Residing at Tacoma.
My appointment expires: 07/09/11